

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR).No.173 OF 2017

Dated:21.06.2017

Between:

P. Satyanarayana, S/o. Jagdhishwar,
Aged about 28 years, Occ: Removed Home
Guard, HG No.614, MT Section, AR
Hqrs, Nizamabad, R/o.Lingampet Village
And Mandal, Nizamabad District

.. Petitioner

AND

The Government of Andhra Pradesh,
Rep., by its Principal Secretary, Home
Department Secretaries Buildings,
Hyderabad and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION (TR).No.173 OF 2017

ORDER:

Petitioner was appointed as Home Guard in the year 2005. On 25.05.2010, on a complaint filed by another Home Guard, Crime No.21 of 2010 was registered against the petitioner making allegation against him and another Home Guard that when his wife was alone in her quarter, petitioner trespassed into the house and attempted to commit rape. Petitioner was arrested on 26.05.2010 and he was in custody till 28.06.2010. It appears, on 09.06.2010, show cause notice was issued to the petitioner calling upon him to submit his explanation. The Selection Committee held its meeting on 14.06.2010 and recommended removal of the name of the petitioner along with two other Home Guards on the allegation that he was involved in Crime No.21 of 2010 on the file of P.S. Domakonda. The resolution of the Selection Committee was forwarded to the Additional Director General of Police, Home Guards, Hyderabad, by the Superintendent of Police, Nizamabad, vide his letter, dated 14.06.2010. By order dated 30.06.2010, name of the petitioner was removed from the rolls of Home Guards Organisation of Nizamabad. The petitioner assails the said order in this Writ Petition.

2. Heard Sri G. Madhusudhan Reddy, learned counsel for the petitioner, and learned Government Pleader for Home appearing for the respondents.

3. Learned counsel for the petitioner submits that the petitioner was in custody from 26.05.2010 to 28.06.2010 and during this period, show cause notice was issued to him. There was no opportunity to the petitioner to respond to the show cause notice, as he was in custody and holding that he did not respond to the show cause notice, final order was passed without affording due opportunity to him. He, therefore, submits that the order under challenge is liable to be set aside on this sole ground.

4. Learned counsel further submits that even by the time show cause notice was issued, the respondents already decided to dispense with the services of the petitioner and issuing of show cause notice and calling for the explanation was only an empty formality. He submits that the procedure as required to take disciplinary action against the Home Guard was not observed and mere issuing of show cause notice is not sufficient. Detailed procedure is required to be followed, whenever, by way of disciplinary action, the services of Home Guards are sought to be dispensed with. In support of the said contention, learned counsel placed reliance on the decision of the Division Bench of this Court in **the State of Andhra Pradesh v. P. Prasad Rao**¹

5. Learned counsel further submits that the only reason for dispensing with the services of the petitioner is that he was involved in the crime. Mere involvement in a crime cannot be a ground to dispense with the services. He further submits that subsequently the petitioner was acquitted by the competent Court

¹ 2012 (1) ALD 76 (DB)

vide judgment dated 29.10.2010 in S.C.No.259 of 2010 on the file of the Assistant Sessions Judge, Kamareddy, and therefore his involvement gets wiped out. Therefore, there was no justification for not inducting the petitioner into duty and the same is illegal. He further submits that representations were already submitted by the petitioner, but the same were not considered and no decision was taken thereon.

6. Learned Government Pleader for Home neither disputes the basic facts, as noted, nor controverts the principle laid down by the Division Bench of this Court in the decision relied upon by the learned counsel for the petitioner. He sought to submit that there was no justification for the petitioner not to respond to the show cause notice when the same was served on him and therefore it cannot be said that there was violation of the principles of natural justice. In the instant case, as petitioner failed to avail the opportunity provided to him, he cannot complain violation of the principles of natural justice or not affording an opportunity to him.

7. The facts noted above disclose that show cause notice was issued to the petitioner when he was in custody and the respondents have not waited even for a reasonable time before he was released on bail and two days after his release, final order was passed. It is not in dispute that the petitioner was given only show cause notice and consequently final orders were passed. Show cause notice refers to involvement of the petitioner in Crime No.21 of 2010. Thus, the only basis for taking action against the petitioner was his involvement in the crime.

8. With reference to the procedure required to be followed to dispense with services of Home Guards by way of disciplinary action, the Division Bench of this Court in **P. Prasad Rao**, after elaborately considering the scope of the Andhra Pradesh Home Guards Act, 1948 and the Rules held as under:

“... The decision in Dr. Harbhajan Singh Greasy does not support the contention of the Government Pleader that the matter should have been remitted to the Commandant. It was a case where the delinquent officer was removed after a regular departmental enquiry. The High Court found the enquiry to be defective, but directed the reinstatement of the delinquent officer while setting aside the removal order. This was faulted by the Supreme Court on the holding that when the enquiry was found to be faulty, it would not be proper to reinstate with consequential benefits and that the matter requires to be remitted to the authority to follow the procedure at which the fault was pointed out. In none of these cases any such enquiry was conducted, and therefore, we are not persuaded with the submission. Indisputably, the HGs are paid the honorarium (Rule 10 of the Rules) only for the period during which they discharge the duty. In all the matters, the applicants were not detailed as HGs after their removal and therefore the question of payment of wages would not arise. It is needless to mention that as the orders of removal passed by the Commandant have been set aside for violation of principles of natural justice, it is for the competent authority to take necessary action as deemed fit in law. We, however, are not inclined to make any observations which may prejudice the parties.”

9. In the instant case also due procedure was not observed. Even otherwise, as seen from the material on record the only reason for dispensing with the services of the petitioner was on the ground of his involvement in crime. Mere involvement in crime cannot be a ground to dispense with the services of Home Guard. Furthermore, tag of involvement in crime stood wiped out as a

consequence to acquittal granted by the competent Court in S.C.No.259 of 2010.

10. Having regard to the fact that the procedure as required was not followed as held by the Division Bench of this Court in **P. Prasad Rao** and the petitioner was acquitted in the crime, which was the basis for his removal from service, the order impugned is liable to be set aside.

11. The Writ Petition (TR) is allowed and the impugned order is set aside. The respondents are directed to restore the petitioner as Home Guard. The petitioner is not entitled to claim wages for the period he was out of service. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition (TR) shall stand closed.

Date:21.06.2017

Note: Issue C.C. in one week.
(B/o)
KH

P. NAVEEN RAO, J